

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to abandoned vehicles and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 480, “Abandoned Vehicles,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.89.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.71, 321.89 and 321.90.

Purpose and Summary

The proposed rule making relates to the processing of abandoned vehicles by a police authority or a private entity and aligns with existing legal authority and Department practice. Chapter 480 and Iowa Code section 321.89 provide a specific process for taking possession and disposing of an abandoned vehicle. The intent of this rule making is to clarify the process for disposal of abandoned vehicles and to protect lienholders or others with a legal interest in the abandoned vehicle. The following paragraphs further explain the proposed amendments:

Definitions. A new definition of “bidder registry” is added and the definition of “public auction” is amended to reflect the current options for conducting a public auction, including by electronic means, and to remove the requirement that the highest bidder is awarded the property if the bid represents the fair market value of the property. The intent of this proposed amendment is to encourage use of a public auction to get the most value for the vehicle without necessarily requiring the bid to reach the vehicle’s fair market value.

Abandoned vehicle records. The proposed amendments specify the required abandoned vehicle records that a police authority or private entity must maintain to be available for inspection by a peace officer or employee of the Department if the vehicle is auctioned off or transferred to a demolisher. The required records to be available for inspection include the lien results, the National Motor Vehicle Title Information System (NMVTIS) report when no Iowa owner or lienholders are identified, the impound report, the abandoned vehicle notice, the proof of advertisement of a public auction, the certificate of disposal, a copy of the bidder registry and a copy of the affidavit of sale. Maintenance of these records will help ensure compliance with the steps for processing abandoned vehicles, which will reduce fraud and protect consumers.

Preconditions of sale. A new subrule is added to require a private entity or police authority to verify that the preconditions of selling an abandoned vehicle required under Iowa Code section 321.89 have been met prior to the sale of an abandoned vehicle. The intent of this subrule is to clarify who is responsible for verifying the preconditions of sale under Iowa Code section 321.89 prior to the sale.

Public auction. The proposed amendments address the following requirements related to conducting a public auction of an abandoned vehicle:

- Clarifying that an initial bid at a public auction for the abandoned vehicle may be set at the amount that equals the actual cost of storage and towing of the vehicle.
- Limiting a police authority or private entity to two attempts at selling an abandoned vehicle at auction. If the vehicle cannot be sold at auction after two attempts, or if a sale cannot otherwise be made with enough proceeds to cover expenses associated with processing the abandoned vehicle, then the abandoned vehicle shall be transferred to a vehicle demolisher. This provision will help reduce

the incentive to commit fraud. Because a police authority or private entity is entitled to recoup any unreimbursed costs for processing an abandoned vehicle from the Road Use Tax Fund in accordance with Iowa Code section 321.89(4)“b,” the Department wants to ensure everything possible is being done to achieve the highest sale price for the abandoned vehicle.

- Ensuring that interested members of the public are aware that a vehicle is being offered for sale by adopting certain advertising requirements, which will reduce claims that no one showed up at the public auction to bid on an abandoned vehicle.
- Complying with the requirements under Iowa Code section 321.89 that a public auction, if one was held, actually took place by requiring a bidder registry.
- Requiring a seller of an abandoned vehicle at auction to complete an odometer disclosure statement when an odometer statement is required under Iowa Code section 321.71.
- Clarifying that the costs of advertising the public auction to sell an abandoned vehicle, when submitted with the abandoned vehicle report, are reimbursable in accordance with Iowa Code section 321.89(4)“c” and Chapter 480.

Good-faith purchaser. New subrules are added to create consistency with Iowa Code section 321.89(4)“a” by protecting good-faith purchasers of abandoned vehicles that might otherwise be encumbered by liens. The proposed amendments provide that despite any noncompliance on the part of the police authority or private entity with the requirements for disposing of an abandoned vehicle, a good-faith purchaser of an abandoned vehicle takes title free and clear of all liens and a county treasurer shall process the registration and issue a title for an abandoned vehicle accordingly.

Fiscal Impact

In fiscal year 2019, the Department reimbursed approximately \$309,519 to police authorities and private entities for the processing of abandoned vehicles under Iowa Code section 321.89. This breaks down to an average of \$300 in reimbursement of costs for approximately 1,032 abandoned vehicles. The proposed amendments are not anticipated to result in a significant amount of additional abandoned vehicles being processed each fiscal year because the amendments mostly clarify the process. However, if more public auctions were held because of the proposed amendments authorizing the use of electronic public auctions, the Department might assume that 20 additional vehicles may be sold at public auctions each fiscal year, which translates to an additional \$6,000 (20 x \$300) of reimbursement being paid out of the Road Use Tax Fund each fiscal year.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 29, 2020. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy Bureau
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear requested oral presentations will be held on October 1, 2020, via conference call from 9 to 10 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on September 29, 2020, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs. The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following new definition of "Bidder registry" in rule **761—480.1(321)**:

"*Bidder registry*" means a record of all persons who have registered to bid at a public auction.

ITEM 2. Amend rule **761—480.1(321)**, definition of "Public auction," as follows:

"*Public auction*," when used in Iowa Code section 321.89, means ~~a conventional oral~~ an auction setting open to the general public where. A public auction may be by electronic means, by sealed bid, or a conventional oral auction. The highest bidder is awarded the property. When the auction is a conventional oral auction, bidders shall register and bring the required bid deposit with them to the auction on the day and at the location and time specified for the sale, if a bid deposit is required. Bidders bid against each other one another until bidding stops. The high bidder is awarded the property provided the bid represents the fair market value of the property.

ITEM 3. Amend rule 761—480.2(321) as follows:

761—480.2(321) Location. Information, forms and instructions are available from: ~~Office of Vehicle and Motor Carrier Services Bureau,~~ Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278 or the department's ~~Web site~~ website at <http://www.iowadot.gov/mvd> www.iowadot.gov.

ITEM 4. Amend rule 761—480.3(321) as follows:

761—480.3(321) General requirements.

480.3(1) and **480.3(2)** No change.

480.3(3) To request reimbursement, the police authority or private entity shall complete and submit to the department an abandoned vehicle report on a form and in the manner prescribed by the department. Other forms may be accepted if they contain all information deemed necessary by the department.

480.3(4) A police authority shall also complete and submit the prescribed abandoned vehicle report form when remitting unclaimed profits pursuant to rule 761—480.7(321).

480.3(5) to **480.3(7)** No change.

480.3(8) A police authority or a private entity designated by a police authority holding a public auction may set the initial bid at an amount that equals the actual cost of storage and towing.

480.3(9) A police authority or private entity processing an abandoned vehicle shall maintain records for three years from the sale at a public auction or transfer of a motor vehicle to a demolisher. The

records shall be open to inspection by any peace officer or any employee of the department. The required documents to be made available for inspection shall include:

- a. The motor vehicle record request results letter issued by the department with lien information; or evidence that a motor vehicle record was reviewed for owners and liens through other legal means.
- b. The National Motor Vehicle Title Information System (NMVTIS) report when no Iowa owner or lienholders are identified.
- c. The impound report with the date of abandonment.
- d. One copy of the dated notice sent by the police authority or private entity to each owner and lienholder or proof of publication of notice with the publication date visible.
- e. One copy of actual newspaper page advertising each public auction with advertisement and date visible.
- f. A copy of the certificate of disposal for the private entity.
- g. The bidder registry for the police authority or private entity designated by a police authority holding a public auction.
- h. A copy of affidavit of sale on a form prescribed by the department.

480.3(10) A police authority or private entity shall verify that the provisions of this chapter have been executed, prior to the sale of the abandoned vehicle, on a form prescribed by the department.

480.3(11) A police authority or private entity shall be limited to two attempts at selling an abandoned vehicle at a public auction. If the police authority or private entity cannot make a satisfactory sale at two public auctions, or if a sale cannot otherwise be made with enough proceeds to cover the expenses and costs in carrying out the abandoned vehicle process, the police authority or private entity shall sell or dispose of the vehicle to a demolisher for junk.

480.3(12) A purchaser in good faith of a motor vehicle sold as a result of the abandoned vehicle process takes the motor vehicle free of all rights of all persons, including holders of preexisting liens, notwithstanding any police authority or private entity's noncompliance with this chapter.

480.3(13) Upon presentation of a sales receipt, a county official shall process the registration and issuance of title to the purchaser free of all rights of all persons, including holders of preexisting liens, notwithstanding any police authority or private entity's noncompliance with this chapter.

ITEM 5. Renumber rules **761—480.4(321)** and **761—480.5(321)** as **761—480.7(321)** and **761—480.8(321)**.

ITEM 6. Adopt the following **new** rule 761—480.4(321):

761—480.4(321) Advertising.

480.4(1) A public auction shall be advertised at least seven days in advance within the county where the auction will take place or where the vehicle is physically located. At minimum, the manner of the advertising shall be:

- a. Published in a newspaper which meets the requirements set forth in Iowa Code section 618.3; and
- b. Posted in a conspicuous manner viewable to the public at the location where the public auction will occur. If the public auction is to be conducted by electronic means, the location shall be the specific website to be used for the auction.

480.4(2) If a vehicle is not sold at the scheduled public auction, any subsequent attempt to sell the vehicle by auction must be preceded by advertising pursuant to this rule.

ITEM 7. Adopt the following **new** rule 761—480.5(321):

761—480.5(321) Bidder registry.

480.5(1) A police authority or private entity designated by a police authority shall maintain for three years the bidder registry for each auctioned vehicle sold or offered for sale at a public auction. The bidder registry shall be open for inspection by any peace officer or department employee. For each auctioned vehicle, the bidder registry shall contain:

- a. The full name of the bidder.

- b. The bona fide address of the bidder.
- c. A telephone number of the bidder.
- d. The date of the auction.
- e. The auctioned vehicle's make, model, model year, and vehicle identification number.
- f. The location of the auction.

480.5(2) Reserved.

ITEM 8. Adopt the following new rule 761—480.6(321):

761—480.6(321) Odometer statement.

480.6(1) When a vehicle is sold at a public auction and the seller cannot attest to the true mileage reading of the vehicle's odometer, the seller shall complete the odometer disclosure statement, when required pursuant to Iowa Code section 321.71, in the following manner:

- a. The odometer statement shall reflect the odometer mileage reading at the time of sale; and
- b. The odometer statement shall be marked indicating "odometer discrepancy," certifying the odometer mileage reading is not the actual mileage.

480.6(2) The subsequent title issued for the vehicle shall record the vehicle's mileage is "not actual."

ITEM 9. Amend renumbered subrule 480.7(4) as follows:

480.7(4) Receipts. The police authority or private entity shall submit with the abandoned vehicle report detailed receipts showing payment for each expense incurred. A receipt must identify the date(s) of occurrence of the expense; for example, a receipt for storage must identify the beginning and ending dates. A receipt for both towing and storage must show separately the towing charge and the storage charge per day. Reimbursement shall be limited as follows:

- a. to c. No change.
- d. Advertising—up to \$20 per auction, or advertising receipt totals for two auctions, whichever is less, not to exceed \$40 total.
- ~~e.~~ Auction expenses—10 percent of the vehicle's sale price or \$10 per vehicle, whichever is less. A receipt is not required for auction expense reimbursement.

ITEM 10. Amend **761—Chapter 480**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.71, 321.89 and 321.90.